PRINCIPAL AND AGENT—MUTUAL RIGHTS—ACTING FOR ADVERSE PARTIES.—COMPENSATION.—ATTERBURY V. HOPKINS ET AL., 99 S. W. (Mo.) 11.—*Held,* If an agent employed by one party acts secretly for the other also, he cannot recover compensation from his employer, who was not aware of the dual agency. An agent cannot obtain a commission from his principal for buying, where, unknown to such principal, he has received a commission from the seller. *Finsley v. Penniman,* 12 Tex. Civ. App. 591. An agent, who, in procuring subscriptions to the stock of a corporation fraudulently and without the knowledge of the company, received rewards from subscribers for procuring their lands to be taken by company, cannot recover compensation from the company. *Cleveland & St. L. R. Co. v. Patterson,* 15 Ind. 70. An agent cannot recover compensation for his services where he acted for both parties without the knowledge of the party who employed him. *Huffcut on Agency,* p. 102.

PRINCIPAL AND AGENT—NOTICE TO PRINCIPAL—KNOWLEDGE OF AGENT.—BADGER V. COOK, 101 N. Y. SUPP. 1067.—*Held:* That the burden is on a party seeking to charge a principal with knowledge of his agent acquired in a different transaction and before the agency existed to show by clear and satisfactory evidence that the knowledge was present in the agent's mind at the time of the transaction under the agency.

The general rule is that notice of facts to an agent is constructive notice thereof to the principal when it is connected with the subject-matter of the agency. *Suit v. Woodhall,* 113 Mass. 391. Likewise if acquired pending the proceedings. *Johnston v. Laflin,* 103 U. S. 800. The old English rule was that notice of facts to the agent to bind the principal by constructive notice should be in the same transaction. *Warrick v. Warrick,* 3 Atk. 291. This was later modified to the extent that when one transaction is closely followed by and connected with another, it is constructive notice to the principal, *Hargreaves v. Rothwell,* 1 Keen 154. But it is also held that agent must actually have it in mind at time of the second transaction. *Nixon v. Hamilton,* 2 Dru. & W. 364. *The Distilled Spirits,* 78 U. S. (11 Wall.) 356. This rule holds good when knowledge is obtained when acting outside of his employment. *Wilson v. Minn. Farmers' Mut. F. Ins. Asso.,* 36 Minn., 112; also extends to corporations and their officers. *New Milford First Nat. Bank v. New Milford,* 36 Conn. 93. Except when agent is engaged in committing an independent fraudulent act on his own account. *Allen v. South Boston R. Co.,* 150 Mass. 206. Burden of proof is upon the party who seeks to charge the principal with notice by reason of such knowledge of agent. *Constant v. University of Rochester,* 111 N. Y. 604.

SALES—ARTICLES TO BE MANUFACTURED—CONTRACT—BREACH—WAIVER.—ROBERT GAIR CO. V. LYON, ET AL., 101 NEW YORK SUPP. 787. A manufacturer received an order from a dealer for the manufacture of cartons to contain a specified address and to be delivered in installments. The manufacturer delivered an installment which did not contain the address, but which the dealer accepted and paid for. The manufacturer delivered a second installment, which the dealer refused to accept on the ground that the cartons did not contain the address. *Held,* that the dealer's acceptance of the first installment did not amount to a waiver of his right to reject the second. A strict and literal performance in accordance with the terms of a contract is, as

a rule, required, *Dauchey v. Drake,* 85 N. Y. 407. If the contract is not performed in accordance with the terms, the retention of the goods after the defect has been discovered is a waiver of the defect. *Titley v. Enterprise Store Co.,* 18 Ill. 457. If the goods are to be delivered in installments, and the vendee on receiving part of the goods retains them, he waives any breach of the contract by the vendor, *Shields v. Pettee,* 2 Land. L. C. R. 262 N. Y., and accepting part of the goods and paying for them will justify the vendor in making subsequent deliveries of goods in accordance with the terms of the contract, *Miller v. Moore,* 83 Ga. 685, but if the vendor cannot deliver goods in accordance with the terms of the contract, any installment which goes to the essence of the contract may be refused by the vendee. *Norrington v. Wright,* 115 U. S. 188. Where there is a contract for the sale of goods deliverable in installments, which are to be paid for on delivery, and the seller makes defective delivery in respect to one installment, or the buyer fails to take delivery of or pay for an installment, the question arises whether the breach gives rise merely to a claim for compensation or to a right to treat the whole contract as repudiated. It is difficult to reconcile the English cases upon this point. Some say it is a breach going to the root of the matter, *Hoare v. Rennig,* 5 Hurl. & U. 19, while the opposite view is upheld in the leading case of *Simpson v. Griffin,* L. R. 8 Q. B. 14. In this country the same conflict arises, but the Supreme Court has held it is such a breach. *Norrington v. Wright, supra.*

SEDUCTION—CRIMINAL PROSECUTION—EVIDENCE—ADMISSIBILITY.—STATE V. BENNETT, 110 N. W. 150 (IA.).—*Held,* that in a prosecution for seduction, the prosecutrix was properly permitted to testify that she yielded her person to the defendant's embraces because of his promises. The disqualification of parties as witnesses in their own behalf being now practically obsolete throughout our land as witnesses they may testify to intent or motive. *Wigmore Ev.,* Section 581. In accordance, it was held no error to ask the prosecutrix if, at the time of her seduction, she believed that defendant would marry her. *Armstrong v. People,* 70 N. Y. 38. And in *State v. Brinkhaus,* 34 Minn. 285, and *Ferguson v. State,* 71 Miss. 805, it was held that prosecutrix might testify that she permitted the intercourse because of the promises of marriage. But the accused may testify in rebuttal that prosecutrix knew he was engaged to be married to a third person. *State v. Brown,* 86 Ia. 121. Probably, in Alabama alone is the prosecutrix not permitted to testify to the motive which induced her to sexual intercourse. *Wilson v. State,* 73 Ala. 527.

SLANDER—WORDS ACTIONABLE PER SE.—BATTLES V. TYSON, 110 N. W. 299 (NEB.).—*Held,* to charge a woman with being a lewd character, of using her body for commercial purposes, and with keeping a gambling room, is actionable, *per se.*

It is not necessary in order to render words actionable *per se,* that they bear criminal import. If the words in their ordinary acceptation, would naturally and presumably be understood as importing a charge of crime, they are *prima facie* actionable. *Stroebel v. Whitney,* 18 N. W. 98 (Minn.). So charging a party with keeping a gambling place is sufficient to charge a crime and so is actionable. *Buckley v. O'Neil,* 113 Mass. 193. In *Ross v. Fitch,* 58 Fed. 148, it was held that words, imputing a want of chastity of a female are not actionable *per se,* but that specific damages